



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director  
  
Gerard Secley, Jr.  
Piedmont Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**  
**SPECIAL ORDER BY CONSENT**  
**ISSUED TO**  
**EASTSIDE PROPERTIES, INC. AND**  
**MR. HERMAN HARRISON**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Eastside Properties, Inc. and Mr. Herman Harrison, for the purpose of resolving certain violations of environmental law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. “Mr. Harrison” means Mr. Herman Harrison, President and sole owner of Eastside Properties, Inc. Eastside Properties Inc. owns the property located behind the River Road Subdivision, bordered by Ferndale Road and River Road in Dinwiddie County.
7. “Eastside Properties” means Eastside Properties, Inc. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit.
10. “ACOE” means U.S. Army Corp of Engineers.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Eastside Properties whose President and sole owner is Mr. Harrison, owns, among other parcels of property, 37.43 acres of property located behind the River Run Subdivision, bordered by Ferndale Road and River Road in Dinwiddie County (the property). The property contains wetlands and an unnamed tributary to the Appomattox River.
2. On October 15, 2003, DEQ received a report of possible clearing and grubbing of wetlands without a permit on the property.
3. On October 30, 2003, DEQ staff performed a site inspection of the property. Staff observed that several acres of wetlands had been cleared, partially grubbed and stumped.
4. On November 11, 2003, DEQ staff contacted Eastside Properties’ consultant, Larry Madison & Associates, Inc., and was informed that the Corps had confirmed that approximately 7.41 acres of wetlands located along the eastern boundary of the property, had been impacted by clearing and partial grubbing activities. DEQ discussed with Eastside Properties’ consultant actions necessary to bring the site into compliance with State laws and regulations.
5. On December 19, 2003, DEQ issued a NOV to Mr. Harrison citing unauthorized impacts to wetlands on the property.
6. On January 13, 2004, a meeting was held between DEQ staff and Mr. Harrison and Eastside Properties’ consultant to discuss resolution of the unauthorized impacts on the property. In order to come into compliance, Mr. Harrison decided to restore the impacted wetlands.

7. On February 12, 2003, DEQ received a draft plan from the consultant to restore the impacted wetlands. The Restoration Plan was dated 1/21/04 and revised on 3/15/04. The revised 3/15/04 Plan was approved by DEQ.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Eastside Properties and Mr. Harrison and Eastside Properties and Mr. Harrison agree, to perform the actions described in Appendix A of this Order. In addition, the Board orders Eastside Properties and Mr. Harrison, and Eastside Properties and Mr. Harrison voluntarily agree, to pay a civil charge of **\$10,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Eastside Properties and Mr. Harrison, for good cause shown by Eastside Properties and Mr. Harrison, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Eastside Properties and Mr. Harrison admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Eastside Properties and Mr. Harrison consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Eastside Properties and Mr. Harrison declare they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any

judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Eastside Properties and Mr. Harrison to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Eastside Properties and Mr. Harrison shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Eastside Properties and Mr. Harrison shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Eastside Properties and Mr. Harrison shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Eastside Properties and Mr. Harrison. Notwithstanding the foregoing, Eastside Properties and Mr. Harrison agree to be bound by any compliance date which precedes the effective date of this Order.

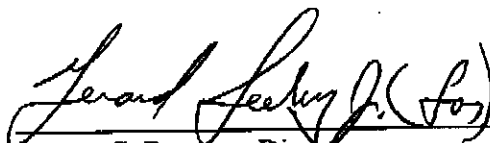
11. This Order shall continue in effect until:

- a. Eastside Properties and Mr. Harrison petition the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order;  
or
- b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Eastside Properties and Mr. Harrison.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Eastside Properties and Mr. Harrison from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By their signature below, Eastside Properties and Mr. Harrison voluntarily agree to the issuance of this Order.

And it is so ORDERED this day of December 3, 2004.



Robert G. Burnley, Director  
Department of Environmental Quality

Eastside Properties and Mr. Harrison voluntarily agree to the issuance of this Order.

By: Hermon W. Harrison

Date: 7-30-04

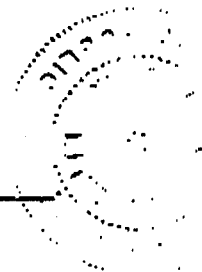
Commonwealth of Virginia

City/County of DINWIDDIE

The foregoing document was signed and acknowledged before me this 30<sup>th</sup> day of  
July, 2004, by Herman Harrison, on behalf of Eastside  
(name)  
Properties.

Jamara P. Morgan  
Notary Public

My commission expires: 9-30-04



## APPENDIX A

Eastside Properties and Mr. Harrison shall:

1. By **December 31, 2004**, implement and complete the restoration plan as prepared and submitted by Larry Madison & Associates, Inc. dated January 21, 2004 and revised on March 15, 2004 (the Restoration Plan).
2. Monitor the restored wetland in the years 1, 2, and 3 after planting the vegetation. Monitor in accordance with the Restoration Plan. The first year of monitoring shall be in the year 2004 and shall occur in August or September of each monitoring year.
3. Submit to DEQ the annual monitoring reports by **November 30th**, for a period of three years. Reports shall include photographs, percent survival and stem density estimates for established vegetation, presence of invasive or exotic species noted, and recommendations if remediation is required to bring the area into compliance with the approved restoration plan.
4. For the restoration of the wetlands to be considered successful: more than 50% of all dominant woody plants, expressed by plant stems or canopy coverage shall be facultative (Facultative plants are equally likely to occur in wetlands or non-wetlands) or wetter - facultative wet (Facultative Wetland plants usually occurs in wetlands, but occasionally found in non-wetlands) or obligate (Obligate Wetland plants occurs almost always under natural conditions in wetlands). A minimum stem count of 400/acre must be achieved until the canopy cover is thirty percent (30%) or greater. A minimum of 80% of the planted trees and shrubs must be viable and show signs of growth. Species composition shall reflect the desired plant community stated in the restoration plan (Figure 3-1, Wetland Restoration Planting Plan) by the end of the first growing season and shall be maintained through the remaining monitoring years. Finally, invasive or undesirable species should not present a threat to natural colonization and diversity within the restoration area. This criterion is to be assessed subjectively by mapping existing communities and noting aggressive patterns of colonization.
5. Submit and implement an approvable corrective action plan with the 2006 monitoring report, if the success criteria is not achieved by year 3.
6. Post permanent wetland signs designating the area as a protected wetland conservation area **within 60 days of issuance of this Order.**
7. Submit to DEQ the permanent recorded Deed Restriction on the 7.41 acres of jurisdictional wetlands delineated along the eastern property boundary **within 60 days of issuance of this Order.**
8. Pursuant to this Order, submit all documentation required by this Consent Special Order to:

Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060